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CIVIL PROCEDURE-JUDGMENTS--PLEA OF GUILTY IN CRIMINAL ACTION AS BASIS FOR COLLATERAL ESTOPPEL IN LATER CIVIL ACTION

Wilber M. Brucker, Jr. S.Ed.
University of Michigan Law School

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RECENT DECISIONS

CIVIL PROCEDURE—JUDGMENTS—PLEA OF GUILTY IN CRIMINAL ACTION AS BASIS FOR COLLATERAL ESTOPPEL IN LATER CIVIL ACTION—Defendant had pleaded guilty to specific criminal charges under the False Claims Act.¹ The United States then sued defendant to recover civil damages under the Contract Settlement Act² on the same fact situation. When defendant attempted to contest the verity of facts to which he had pleaded guilty in the earlier criminal action, the United States attempted to have defendant estopped as a matter of res judicata, asking the court for a directed verdict as to the issues decided in the criminal action. *Held*, directed verdict as to those issues to which the defendant had pleaded guilty would be granted when separated from matters based on new issues and facts. *United States v. Bower*, (D.C. Tenn. 1951) 95 F. Supp. 19.

Collateral estoppel, a form of res judicata, can be described as the doctrine which bars the raising of the verity of a question of right or fact that has been decided by a competent court between the parties in a prior and different cause of action.³ An example is where a plaintiff has two causes of action based on similar facts. Plaintiff sues on one cause of action and recovers a judgment; then in a suit on the second cause of action, defendant is estopped from challenging the verity of the ultimate facts found in the first cause of action.⁴ This doctrine is clearly recognized when both the first and second suits are civil in nature, although its application is sometimes difficult.⁵ The court in the principal case is faced with the example just given, but with this difference: in the principal case, the first cause of action was a criminal one in which the defendant pleaded guilty. When discussing the general doctrine of collateral estoppel in cases in which both actions are civil in nature, courts use broad language which could well include a situation in which the first cause of action was criminal in nature.⁶ The writer has not found a court using language which would deny the doctrine where the first suit was criminal. In fact, in the few occasions in which this matter has arisen, it may be said that the doctrine of collateral estoppel has been applied. When the defendant had been convicted of violating the Sherman Anti-Trust Act, he was estopped to deny facts found

¹ 62 Stat. L. 698 (1948), 18 U.S.C. (Supp. IV, 1951) §287.

² 41 U.S.C. (Supp. IV, 1951) §119.

³ *Commissioner v. Sunnen*, 333 U.S. 591, 68 S.Ct. 715 (1948); *McIntosh v. Wiggins*, (8th Cir. 1941) 123 F. (2d) 316; *Divide Creek Irr. District v. Hollingsworth*, (10th Cir. 1934) 72 F. (2d) 859.

⁴ The court in the principal case is concerned only with deciding whether the doctrine of collateral estoppel should apply, and not to what facts it should apply. For a discussion of the type facts that may come under the doctrine, see *The Evergreens v. Nunan*, (2d Cir. 1944) 141 F. (2d) 927.

⁵ Scott, "Collateral Estoppel by Judgment," 56 HARV. L. REV. 1 (1942).

⁶ See cases cited in note 3 *supra*.

by the jury both in a later civil injunction suit brought by the government,⁷ and in a suit brought by a private party to recover damages.⁸ When defendant had been convicted of murder, she was estopped to deny the facts of the murder in a subsequent civil action to collect from the United States the deceased's War Risk Insurance.⁹ In none of the above situations did it appear that the defendant pleaded guilty. The facts found by the jury constituted the basis for the subsequent civil action.¹⁰ Assuming that an innocent party rarely pleads guilty, it appears to be no greater hardship on him than if the first action had been civil and he had consented to an adverse judgment.¹¹ It must be noted that this is a case in which mutuality of estoppel is lacking;¹² although the parties to the two actions are the same, it is certain that had the defendant been acquitted in the criminal proceedings, the government would not have been estopped to bring the subsequent civil action based on the same fact situation.¹³

Wilber M. Brucker, Jr., S.Ed.

⁷ *Local 167, International Brotherhood of Teamsters, etc. v. United States*, 291 U.S. 293, 54 S.Ct. 397 (1934).

⁸ *Northwestern Oil Co. v. Socony-Vacuum Oil Co.*, (7th Cir. 1943) 138 F. (2d) 967.

⁹ *Austin v. United States*, (7th Cir. 1942) 125 F. (2d) 816.

¹⁰ It is interesting to note that in a majority of jurisdictions evidence of a prior criminal conviction of the defendant based on the same transaction and involving similar facts is inadmissible in a civil action unless the defendant pleaded guilty to the crime. *Interstate Dry Goods Stores v. Williamson*, 91 W.Va. 156, 112 S.E. 301 (1922); see also 31 A.L.R. 258.

¹¹ If the first action had been civil in nature, there would be no question that a consent judgment would have the same effect as if the matter had been fully litigated. *Biggio v. Magee*, 272 Mass. 185, 172 N.E. 336 (1930).

¹² FREEMAN, JUDGMENTS §§428, 429 (1925).

¹³ *Helvering v. Mitchell*, 303 U.S. 391, 58 S.Ct. 630 (1938).